

(2016) 01 JH CK 0071

In the Jharkhand High Court

Case No : Cr. Appeal (D.B.) No. 1794 of 2004

Banmali Khandayat and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 1 AIRJharR 355 : (2016) 1 ECRC 678 : (2016) 2 JBCJ 112 :
(2016) 1 JLJR 668

Hon'ble Judges : Dhruv Narayan Upadhyay and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Sanjay Saxena, Amicus curiae, for the Appellant; Manoj Kumar No. 3, A.P.P., for the Respondent

Final Decision : Disposed Off

Judgement

1. This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 16th August, 2004 and 18th August, 2004 respectively, passed by the Additional Sessions Judge, Fast Track Court No. 1, Chaibasa in connection with Sessions Trial Case No. 68 of 2004 corresponding to G.R. Case No. 538 of 2003, Hatgamharia P.S. Case No. 35 of 2003, whereby both the appellants have been held guilty for the offence punishable under section 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The facts of the case as per fard-beyan of Randai Kui recorded on 28.12.2003 at about 6:05 a.m. at Village Hurdubsai within P.S. Hatgamharia is that on 27.12.2003 she left home at 9 a.m. and went to the house of Mangal Singh Korha for discharging her duty. Her husband Duka Purty (deceased) and son Gobind Purty were present at home. At about 5 p.m. Gobind Purty reached there and informed that appellant Banmali Khandayat and his wife Dudumai Khandayat have taken his father with them on the pretext of providing rice beer. He further informed that the appellants had been causing assault to Duka Purty by means

of tangi and other weapons in their house. On receiving such information, the informant rushed to the house of the appellants and saw the accused persons having tangi and Bhala in their hands. When the informant tried to save her husband she was given a push by the appellants and they fled away. The matter was reported to the police and fard-beyan of Randai Kui was recorded. On the basis of fard-beyan Hatgamharia P.S. Case No. 35 of 2003 dated 28.12.2003 u/s. 302/34 Indian Penal Code was registered against the appellants.

The police after due investigation submitted charge sheet and, accordingly, cognizance was taken. Since the offence for which the accused persons were charge sheeted, is exclusively triable by the Court of Sessions, the case was committed to the court of Sessions and registered as Sessions Trial No. 68 of 2004.

The prosecution in order to substantiate the charge has examined altogether eleven witnesses. The learned Additional Sessions Judge after considering the evidence and documents on record held both the appellants guilty for the offence punishable u/s. 302/34 I.P.C. and sentenced them as indicated above.

3. Learned counsel for the appellants has assailed the impugned judgment of conviction and sentence mainly on the ground that the material witnesses examined are not reliable and there statement is not consistent. The material witnesses PW 3, P.W.5, P.W.6 and P.W.8 had given their statements on the basis of information received by them from Gobind Purty who is minor son of deceased. The aforesaid prosecution witnesses have stated, when they reached to the place of occurrence they had seen the appellants present in the house. Appellant namely Banmali Khandayat was holding a tangi in his hand while his wife Dudumai Khandayat was having a spear without handle. It is pointed out that the statement of witnesses on the point of weapons held by the appellants is not consistent. Some of the witnesses have stated that Dudumai Khandayat was having Barchi, somebody has stated she was having Bhujali. Likewise, the statement of witnesses is also not consistent with regard to the weapon held by the appellant Banmali Khandayat. All the aforesaid witnesses have said that they were informed about the occurrence by Govind Purty son of deceased do not appear to be correct. The boy was hardly 3-4 years at the time of occurrence. At the time of occurrence aforesaid witnesses were not present at one place rather they were present either at the place of their work or at their residence. The informant PW-8 has stated that when he reached to the place of occurrence nobody was present. If such statement of the informant is correct, presence of remaining witnesses stand falsified. The learned counsel for the appellants has referred the post-mortem report proved by PW-11 which indicates that only one injury was detected on the person of deceased, but, the witnesses have gone to the extent of saying, when they reached to the place of occurrence they had seen assault caused to the deceased by the appellants. Since evidence of so-called eye witnesses has not been corroborated by post-mortem report, reliance should not have been placed for holding the appellants guilty for the offence

punishable under section 302 I.P.C.

4. Learned A.P.P. appearing for the State has submitted that dead body of Duka Purty was recovered from a room of the house of these appellants. The evidence of PW-4 Gobind Purty is very clear that the appellants had taken the deceased to their house on the pretext of providing rice beer. The boy had seen the appellants causing assault to his father Duka Purty(deceased). Considering such situation Gobind Purty ran to the place where his mother was present and informed about the occurrence. He has also given information to other witnesses regarding assault caused by the accused persons to his father.

P.W.1 Rajan Keshari Dakua and P.W. 2 Seraga Purty are the witnesses to the inquest and they proved the inquest report and admitted that inquest report was prepared in their presence. P.W.-1 Rajan Keshari Dakua and P.W.3 Sona Ram Purty are also witnesses to the seizure list. They have stated that a Lathi, an Axe and a Spear were recovered from the place of occurrence. PW-3 Sona Ram Purty has proved his signature appearing on the seizure list. PW-1 and PW-2 have further stated that they had seen dead body of Duka Purty lying in the house of appellants. Sona Ram Purty PW-3 had witnessed the part of the occurrence. He says when he reached to the place of occurrence he saw that Dudumai Khandayat was catching hold of deceased Duka Purty whereas appellant Banmali Khandayat had given a tangi blow on his head. After committing assault Banmali Khandayat was trying to escape, but, he was chased and caught by these witnesses. It is submitted that P.W.4, P.W. 5 and P.W. 8 have also corroborated the prosecution case. The ocular evidence also finds support from the medical report. The learned Additional Sessions Judge has rightly held the appellants guilty and the findings of the trial court needs no interference.

5. We have examined the material available on records, perused the impugned judgment and considered the depositions of witnesses. Duka Purty was assaulted in the house of these appellants is fully proved by the statements of PW-3,PW-4 and PW-5 which fact find support from the evidence that the dead body as well as weapon used, were seized from the place of occurrence. Nothing has been elicited in the cross-examination done against PW-3 Sona Ram Purty and PW-5 Mangal Singh Korah. They have clearly stated after they received information about the incident from Gobind Purty, they rushed to the house of appellants and seen appellants Banmali Khandayat causing injury on the head of the deceased by a tangi. P.W. 3 had chased the appellant Banmali Khandayat and apprehended him. We do not find any cogent material to disbelieve these two independent witnesses.

P.W. 4 Gobind Purty and P.W.8 Randai Kui respectively are son and wife of deceased. Gobind Purty had informed all the witnesses that his father Duka Purty was taken by the appellants to their house, finds full corroboration from the statements of witnesses examined. The dead body of Duka Purty and the weapons used were recovered from the house of appellants and this fact also find support from the statements of almost all the material witnesses. The eye

witnesses have also deposed that appellant Banmali Khandayat caused injury to the deceased on his head by means of tangi and the injury so caused is corroborated by the post-mortem report. P.W.9 Kedar Nath Ram happens to be the investigating officer and he has supported the investigation done by him. He has proved the fard-beyan Ext. 2, Formal F.I.R. Ext. 3, Inquest Report Ext. 4 and Seizure List Ext. 5. He has described the place of occurrence in paragraph No. 2 of his deposition. The weapons seized were also produced by P.W. 10 and marked as material Ext. Nos. I, II and III.

6. Considering the clinching evidence available on record against the appellants we do not feel desirable to give weight to minor contradictions appearing in the statements of witnesses and that is not sufficient to discard or disbelieve the statements of witnesses recorded. We do not find any merit in this appeal, the same stands dismissed. The judgment of conviction and order of sentence dated 16th August, 2004 and 18th August, 2004 respectively, passed by the Additional Sessions Judge, Fast Track Court No. 1, Chaibasa in connection with Sessions Trial Case No. 68 of 2004 corresponding to G.R. Case No. 538 of 2003, Hatgamharia P.S. Case No. 35 of 2003 is hereby upheld. The bail bond of Dudumai Khandayat is hereby cancelled and she is directed to surrender before the convicting/successor court to serve out the punishment. If she fails to surrender before the convicting court within thirty days from today the learned convicting/successor court shall take appropriate steps by issuing processes against the said appellant namely Dudumai Khandayat, to secure her attendance.

7. Learned counsel Sri Sanjay Saxena has been appointed as Amicus Curiae to assist the Court and, therefore, he is entitled to receive required fee and for that Member Secretary, JHALSA is requested to do needful.